

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 5TH DECEMBER 2007 / 14TH AGRAHAYANA 1929

Bail Appl..No. 7461 of 2007()

CRIME NO.1318/07 OF TIRUR POLICE STATION

PETITIONERS : ACCUSED

1. SIRAJUDHEEN.K, S/O POKKER,
AGED 23 YEARS, KARUTHERY HOUSE,
SOUTH PALLAR P.O., VAIRAMGODE, TIRUR TALUK,
MALAPPURAM DISTRICT.
2. SHAHEER.K., S/O POKKER,
AGED 19 YEARS, KARUTHERY HOUSE,
SOUTH PALLAR P.O., VAIRAMGODE, TIRUR TALUK,
MALAPPURAM DISTRICT.

BY ADV. SRI.SHOBY K.FRANCIS

RESPONDENTS:

STATE OF KERALA/SUB INSPECTOR OF
POLICE, TIRUR POLICE STATION, TIRUR,
MALAPPURAM DISTRICT, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 05/12/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R.BASANT, J

B.A.No.7461 of 2007

Dated this the 5th day of December, 2007

ORDER

Application for anticipatory bail. There are 2 petitioners in this case. The learned Public Prosecutor submits that the 1st petitioner is not required to be arrested and has not been arrayed as an accused in the crime in question, ie. Crime 1318 of 2007 of Tirur Police Station. The petition in so far as it relates to the 1st petitioner can hence be dismissed accepting the submissions of the learned Public Prosecutor.

2. The crux of the allegations is that a police constable, who attempted to intercept the commission of the offence of transportation of river sand illegally in a lorry, was assaulted by the driver of the lorry, the cleaner of the lorry and the cleaner of another vehicle. As a result of this, he was deterred from the performance of his official duties. On his complaint, the F.I.R has been registered. Investigation is in progress. The 2nd petitioner apprehends imminent arrest.

3. The learned Public Prosecutor submits that the 2nd petitioner has been arrayed as the 3rd accused in the crime. The allegations clearly reveal the complicity of the 2nd petitioner along with the co-accused. The police constable was assaulted and deterred from performing his official duties. There are no circumstances at all which can justify or warrant the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C, submits the learned Public Prosecutor .

4. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor This, I am satisfied, if a fit case where the 2nd petitioner must surrender before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular in the ordinary course.

5. In the result, this Bail Application is allowed in part. The petition in so far as it relates to the 1st petitioner is dismissed accepting the submissions of the learned Public Prosecutor. So far as the 2nd petitioner is concerned it is observed that if the 2nd petitioner surrenders before the Investigating Officer or the learned Magistrate and applies for bail after giving sufficient prior

notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-